

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

BID FOR POSITION, LLC,

Plaintiff,

v.

AOL, LLC and GOOGLE, INC.,

Defendants.

CASE NO. 2:07-cv-582 JBF/TEM

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF MOTION TO SEAL**

Plaintiff Bid For Position, LLC (“Bid For”) is filing in this action a redacted version of its Brief in Opposition to Defendants’ Motion for Summary Judgment of Non-Infringement. For the reasons set forth below, this Court should maintain under seal the original, unredacted version of that document, along with the August 6, 2008 Declaration of Don Turnbull (the “Turnbull Declaration”) in support thereof; the August 6, 2008 Declaration of Gregory Dovel (the “Dovel Declaration”) in support thereof and Exhibits 3-9, 21-23 and 25 to the Dovel Declaration.

The presumption in favor of public disclosure of court records can be overcome by a significant countervailing interest. *See Under Seal v. Under Seal*, 326 F.3d 479, 485-86 (4th Cir. 2003). One such significant countervailing interest is a litigant’s desire to protect trade secret or other commercially sensitive information. *Id.*; *see also Nixon v. Warner Communications*, 435 U.S. 589, 598-99, 55 L. Ed. 2d 570, 98 S. Ct. 1306 (1978) (recognizing that “the right to inspect and copy judicial records is not absolute,” and that “courts have refused to permit their files to serve as . . . sources of business information that might harm a litigant’s competitive standing”).

Bid For is obligated to take reasonable steps to maintain the confidentiality of materials, including deposition testimony and documents, designated as confidential and commercially sensitive by defendant Google, in accordance with the terms of the Agreed Protective Order in this action. Since the cited materials are confidential and have been deemed by Google to be commercially sensitive, a more limited redaction would be an unsuitable alternative.

For the foregoing reasons, Bid For respectfully requests that the Court maintain under seal Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment of Non-Infringement; the August 6, 2008 Declaration of Don Turnbull (the "Turnbull Declaration") in support thereof; the August 6, 2008 Declaration of Gregory Dovel (the "Dovel Declaration") in support thereof and Exhibits 3-9, 21-23 and 25 to the Dovel Declaration.

Dated: August 6, 2008

Respectfully submitted,

BID FOR POSITION, LLC

By Counsel

/s/

R. Braxton Hill, IV (VSB No. 41539)

bhill@cblaw.com

Craig T. Merritt (VSB No. 20281)

Nichole Buck Vanderslice (VSB No. 42637)

Christian & Barton, LLP

909 East Main Street, Suite 1200

Richmond, Virginia 23219-3095

Telephone: 804-697-4100

Facsimile: 804-697-4112

Gregory S. Dovel, *p.h.v*

Christin Cho, *p.h.v*

Dovel & Luner, LLP

201 Santa Monica Blvd., Suite 600

Santa Monica, CA 90401

Telephone: 310-656-7066

Facsimile: 310-657-7069

David Rosen, *p.h.v*

Murphy Rosen & Meylan LLP
100 Wilshire Boulevard Suite 300
Santa Monica, CA 90401
Telephone: 310-899-3300
Facsimile: 310-399-7201
ATTORNEYS FOR BID FOR POSITION, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Stephen E. Noona
VSB No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

Charles K. Verhoeven, *pro hac vice*
David A. Perlson, *pro hac vice*
Emily C. O'Brien, *pro hac vice*
Antonio R. Sistos, *pro hac vice*
Katherine H. Bennett, *pro hac vice*
QUINN EMANUEL URQUHART OLIVER &
HEDGES
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
charlesverhoeven@quinnemanuel.com
davidperlson@quinnemanuel.com
emilyobrien@quinnemanuel.com
antoniosistos@quinnemanuel.com
katherinebennett@quinnemanuel.com

Thomas D. Pease, *pro hac vice*
QUINN EMANUEL URQUHART OLIVER &
HEDGES
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
thomaspease@quinnemanuel.com

Counsel for Google Inc.

Stephen E. Noona
VSB No. 25367
KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senoona@kaufcan.com

John M. Williamson, *pro hac vice*
FINNEGAN HENDERSON FARABOW GARRETT
& DUNNER LLP
901 New York Avenue, NW, Suite 700
Washington, DC 20001
Telephone: (202) 408-4000
Facsimile: (202) 408-4400
john.williamson@finnegan.com

Robert L. Burns, II, *pro hac vice*
FINNEGAN HENDERSON FARABOW GARRETT
& DUNNER LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
Telephone: (571) 203-2700
Facsimile: (202) 408-4400
robert.burns@finnegan.com

Counsel for AOL LLC

/s/

R. Braxton Hill, IV (VSB 41539)
Attorney for Bid for Position, LLC
Christian & Barton, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
Telephone: (804) 697-4100
Facsimile: (804) 697-4112
Email: bhill@cblaw.com

884117.2